

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEVIN JOSEPH SMITH,

Petitioner,

V.

SCOTT FRAKES,

Respondent.

Case No. C10-5921RJB/JRC

The underlying matter has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and 636 (b)(1)(B), and Local Magistrate Judge Rules MJR3 and MJR4. The matter is before the court on petitioner's motion for appointment of counsel (ECF No. 16).

There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254, unless an evidentiary hearing is required or such appointment is “necessary for the effective utilization of discovery procedures.” McCleskey v. Zant, 499 U.S. 467, 495 (1991); United States v. Duarte-Higareda, 68 F.3d 369, 370 (9th Cir. 1995); United States v. Angelone, 894 F.2d 1129, 1130 (9th Cir. 1990); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing Section 2254 Cases in the United States District Courts 6(a) and 8(c). The court also

1 may appoint counsel "at any stage of the case if the interests of justice so require." Weygandt,
2 718 F.2d at 754. In deciding whether to appoint counsel, the court "must evaluate the likelihood
3 of success on the merits as well as the ability of the petitioner to articulate his claims pro se in
4 light of the complexity of the legal issues involved." Id.

5 Petitioner asks the court to appoint counsel because of the rambling nature of his initial
6 petition and because of medication he will be taking. The court provides a form petitioner may
7 use for habeas corpus petitions. The form, if used properly, will make the petition short and
8 legible. The motion is DENIED. The Clerk is directed to mail a copy of this Order to petitioner.

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10 Dated this 12th day of May 2011.

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14 J. Richard Creatura
United States Magistrate Judge
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